

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AXON SOLUTIONS, INC., a Delaware corporation,

Plaintiff,

vs.
SAN DIEGO DATA PROCESSING CORPORATION, a California publicly-owned corporation; and the CITY OF SAN DIEGO, a chartered political subdivision of the State of California,

Defendants.

CASE NO. 09 CV 2543 JM (RBB)

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT CITY OF SAN
DIEGO'S MOTION IN DISMISS**

Doc. No. 5

Plaintiff Axon Solutions, Inc. ("Axon") initiated this litigation on a contract it held with Defendant San Diego Data Processing Corporation ("SDDPC"), a publicly-owned, non-profit corporation which provides information technology services to Defendant City of San Diego (the "City"). Axon makes seven claims: (1) breach of contract, (2) misappropriation of trade secrets, (3) copyright infringement, (4) declaratory relief, (5) quantum meruit, (6) goods and services sold and delivered, and (7) account stated. (Doc. No. 1, hereinafter "Compl.," at 1). The City filed a motion to dismiss all claims. (Doc. No. 5). Axon filed an opposition and the City filed a reply. (Doc. Nos. 10, 13).

The court finds this matter appropriate for disposition without oral argument. *See* CivLR 7.1(d)(1). The court hereby GRANT IN PART and DENIES IN PART the City's motion to dismiss,

1 and dismisses claims one, five, six, and seven.

2 **I. BACKGROUND**

3 Axon is a Delaware corporation which provides “business and computer consulting services,
 4 software product development, implementation, and application management services.” (Compl. ¶ 2).
 5 On September 28, 2007, Axon and SDDPC entered a “Master Services Agreement” (“MSA”) by
 6 which Axon agreed to provide SDDPC with information technology products and services for use by
 7 the City. (Compl. ¶ 8). In exchange, SDDPC agreed to pay Axon \$16,951,786. (Compl. ¶ 9).

8 Axon fulfilled its contractual obligations until SDDPC terminated the agreement for
 9 convenience pursuant to section 2.2 of the MSA. (Compl. ¶ 11). Upon termination, Axon became
 10 entitled to certain payments related to “holdback” amounts, partially completed deliverables, and wind-
 11 down costs. (Compl. ¶ 13). Nonetheless, after termination, SDDPC and the City continued to use
 12 products provided by Axon, which include Axon’s trade secret and copyright-protected material.

13 As neither SDDPC nor the City paid the money due Axon, Axon instituted the claims
 14 procedures provided for in article 21 of the MSA. (Compl. ¶ 33). The parties conducted an
 15 unsuccessful mediation on August 26, 2009. (Compl. ¶ 34). Axon subsequently filed suit on
 16 November 12, 2009. (See Doc. No. 1).

17 **II. LEGAL STANDARD**

18 A court should dismiss an action where a complaint fails to “state a claim upon which relief
 19 can be granted.” Fed. R. Civ. P. 12(b)(6). Therefore, a motion to dismiss should be granted where
 20 the complaint lacks either a “cognizable legal theory” or facts sufficient to support a cognizable legal
 21 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). In evaluating the claim
 22 a court must “accept as true all of the allegations contained in [the] complaint.” *Ashcroft v. Iqbal*, 129
 23 S. Ct. 1937, 1949 (2009). However, the complaint’s “factual allegations must be enough to raise a
 24 right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

25 In testing the complaint’s legal adequacy, the court may consider material properly submitted
 26 as part of the complaint or subject to judicial notice. *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th
 27 Cir. 2007).

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1 **III. DISCUSSION**2 **A. Contract Claim**

3 The City argues that it cannot be liable under the MSA because, not only was the City not an
 4 explicit party to the MSA, the City *cannot* be a party to the MSA because the City did not comply with
 5 the contracting requirements imposed by the City's charter and municipal code.

6 If a city contracts in a fashion forbidden by its charter or municipal code, that contract is
 7 unenforceable against the City. *G.L. Mezzetta, Inc. v. City of Am. Canyon*, 78 Cal. App. 4th 1087,
 8 1094 (Cal. Ct. App. 2000) ("A contract entered into by a local government without legal authority is
 9 'wholly void,' ultra vires, and unenforceable.") (citations omitted). The City's municipal code
 10 provides that "[w]hen a *contract* provides for an expenditure greater than \$1,000,000, the Purchasing
 11 Agent shall advertise for sealed proposals for a minimum of one day in the City Official Newspaper
 12 and shall obtain the City Council's approval to award the *contract*." San Diego, Cal., Mun. Code ch.
 13 2, § 22.3211(d).

14 Axon's complaint does not sufficiently allege that the City is a party to the contract. The
 15 MSA, attached to the complaint as Exhibit 1, states unequivocally that it is an agreement by and
 16 between Axon and SDDPC. (Compl., Ex. 1). Furthermore, Axon's complaint does not allege that the
 17 City Council properly approved the MSA in accordance with the requirements of the Municipal Code
 18 and the City Charter.

19 Axon alleges that the City is liable on the MSA—even though the City was not a party to the
 20 MSA—based on either agency or alter ego theory. Axon's allegations in this regard, however, are too
 21 conclusory to state a claim. Axon claims "SDDPC was and is the agent of the City," but fails to allege
 22 sufficient facts regarding the agency relationship between SDDPC and the City. Therefore, because
 23 Axon insufficiently alleges facts to support the legal conclusion that the City is a party to the MSA,
 24 the City's motion to dismiss Axon's breach of contract claim (Claim 1) is granted.

25 **B. Tort Claims**

26 Axon makes claims for misappropriation of trade secrets (Claim 2) and copyright infringement
 27 (Claim 3), alleging that SDDPC and the City are using Axon's trade secrets and copyrighted
 28 information without authorization. The City argues that these claims should be dismissed because

1 they are “dependent on City having entered into a contract with Axon.” (Doc. No. 5).

2 One who seeks protection against the use or disclosure of a trade secret must
 3 plead facts showing (1) the existence of subject matter which is capable of protection
 4 as a trade secret; (2) the secret was disclosed to the defendant, or to a person for whose
 5 conduct a defendant is liable, under circumstances giving rise to a contractual or other
 6 legally imposed obligation on the part of the disclosee not to use or disclose the secret
 7 to the detriment of the discloser.

8 *Diodes, Inc. v. Franzen*, 260 Cal. App. 2d 244, 250 (Cal. Ct. App. 1968). The City need not be a party
 9 to the contract to have a “legally imposed obligation” to protect Axon’s trade secrets. Therefore,
 10 Axon has pled sufficient facts to state a claims for misappropriation of trade secrets and the City’s
 11 motion to dismiss Claim 2 is denied.

12 “In order to succeed in a copyright infringement claim, ‘a plaintiff must show that he or she
 13 owns the copyright and that defendant copied protected elements of the work.’” *Jada Toys, Inc. v.*
 14 *Mattel, Inc.*, 518 F.3d 628, 636 (9th Cir. 2008) (quoting *Cavalier v. Random House, Inc.*, 297 F.3d
 15 815, 822 (9th Cir. 2002)). The elements of a copyright infringement claim do not require a contractual
 16 relationship. Therefore, Axon has pled sufficient facts to state a claim for copyright infringement and
 17 the City’s motion to dismiss Claim 3 is denied.

18 C. Declaratory Judgment

19 Both parties agree that Axon’s declaratory judgment claim (Claim 4) is related to its claims
 20 for copyright infringement and trade secret misappropriation. The City argues, as it did for Claims
 21 2 and 3, that Axon’s declaratory judgment claim is dependent on a contractual relationship between
 22 Axon and the City. As this argument has already been refuted, and Claims 2 and 3 survive the City’s
 23 motion to dismiss, Axon’s declaratory judgment claim must also survive. Therefore, the City’s motion
 24 to dismiss Claim 4 is denied.

25 D. Quasi-Contract Claims

26 “A private party cannot sue a public entity on an implied-in-law or quasi-contract theory,
 27 because such a theory is based on quantum meruit or restitution considerations which are outweighed
 28 by the need to protect and limit a public entity’s contractual obligations.” *Janis v. Cal. State Lottery*
Comm’n, 68 Cal. App. 4th 824, 830 (Cal. Ct. App. 1998) (citing *Los Angeles Equestrian Center, Inc.*
v. City of Los Angeles, 17 Cal. App. 4th 432, 447 (Cal. Ct. App. 1993)). Axon’s claims for quantum
 29 meruit (Claim 5), goods and services sold and delivered (Claim 6), and account stated (Claim 7) are

1 all quasi-contract theories for recovery. Therefore, the City's motion to dismiss Claims 5, 6, and 7
2 is granted.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the court hereby GRANTS the City's motion to dismiss Axon's
5 claims for breach of contract (Claim 1), quantum meruit (Claim 5), goods and services sold and
6 delivered (Claim 6), and account stated (Claim 7). The court hereby DENIES the City's motion to
7 dismiss Axon's claims for trade secret misappropriation (Claim 2), copyright infringement (Claim 3),
8 and declaratory judgment (Claim 4).

9 **IT IS SO ORDERED.**

10 DATED: February 12, 2010



11
12 Hon. Jeffrey T. Miller
United States District Judge

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